

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
July 20, 2006 Session

CLIFFORD ASLINGER v. KENNETH T. PRICE, ET AL.

**Appeal from the Chancery Court for Hamilton County
No. 05-0538 Howell N. Peoples, Chancellor**

No. E2006-00029-COA-R3-CV - FILED SEPTEMBER 1, 2006

This is an action for specific performance under a contract for sale of approximately 3.31 acres of real estate. Clifford Aslinger contracted to purchase the 3.31 acres from Geoffrey Giesemann, who was acting on behalf of his father's estate. Subsequently, Mr. Giesemann, acting for the estate, sold a larger tract of real estate that included the 3.31 acres to Kenneth T. Price. Mr. Giesemann thought that the agreement with Mr. Price included Mr. Price's assent to convey the 3.31 acres to Mr. Aslinger. When Mr. Price refused to sell, Mr. Aslinger sued for specific performance. The trial court held that the contract between Mr. Aslinger and the Giesemann estate was valid, and that Mr. Price was on inquiry notice of the existence of the prior contract, but declined to order Mr. Price to sell the 3.31 acres to Mr. Aslinger because Mr. Price did not assent to sell it to Mr. Aslinger as part of his agreement with Mr. Giesemann and the estate. We find the evidence does not preponderate against the trial court's factual findings, but based on these findings, we hold that Mr. Price was not a bona fide purchaser without notice, and therefore took the deed from the Giesemann estate subject to Mr. Aslinger's prior interest. We further find that the evidence preponderates against the trial court's award of \$4,700 to Mr. Aslinger against Mr. Price based on its finding of unjust enrichment. We therefore reverse the trial court's monetary award to Mr. Aslinger and remand for entry of an order requiring Mr. Price to transfer the 3.31 acres to Mr. Aslinger at a price of \$4,000 per acre. We affirm the trial court's judgment declining to award either party attorney's fees.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed in Part
and Reversed in Part; Case Remanded**

SHARON G. LEE, J., delivered the opinion of the court, in which CHARLES D. SUSANO, JR. and D. MICHAEL SWINEY, JJ., joined.

Frank P. Pinchak, Chattanooga, Tennessee, for the Appellant, Clifford Aslinger.

Sam D. Elliott, Chattanooga, Tennessee, for the Appellees, Kenneth T. Price and Pamela G. Price.

OPINION

I. Background

Mr. Aslinger and Mr. James Earnest Giesemann, now deceased, owned adjacent property in Hamilton County, Tennessee. Mr. Aslinger was interested in buying part of the Giesemann land, and after James Giesemann's death, he approached Geoffrey Giesemann, his son and the administrator of the estate, about buying some acreage adjacent to his home. The Giesemann heirs were interested in selling the devised property, which totaled approximately 43.31 acres. After negotiation, Mr. Giesemann, on behalf of the estate and with consent of the other heirs, contracted to sell Mr. Aslinger approximately 3.31 acres that abutted Mr. Aslinger's property at a price of \$4,000 per acre.

After executing the Aslinger contract, the Giesemann heirs listed the remaining 40 acres of the farm for sale. Kenneth T. Price made an offer on the property, and the estate and Mr. Price executed a contract (the "first contract") whereby Mr. Price agreed to buy the remaining approximately 40 acres at a price of \$5,500 per acre. Shortly thereafter, Mr. Price expressed concerns about closing on the first contract before the sale of the 3.31 acres pursuant to the Aslinger contract was closed. Mr. Price refused to close until the deal between Mr. Aslinger and the Giesemann estate was closed. At least one of the Giesemann heirs was in a hurry to get the 40 acres sold because he needed the funds, however, and the heirs became concerned about the potential delay in closing the Aslinger deal, because they believed it would require planning commission approval.

Consequently, the estate and Mr. Price, after further negotiation, executed a second contract reflecting their agreement that the estate would sell the entire farm, including the 3.31 acres, to Mr. Price. The sale price was increased by \$12,000 in payment for the additional land. The confusion that precipitated this action was caused by the failure of the parties to clearly communicate their intentions regarding the 3.31 acres under previous contract with Mr. Aslinger. Geoffrey Giesemann testified that his understanding was that as part of the second agreement, Mr. Price had agreed to convey the 3.31 acres to Mr. Aslinger at a price of \$4,000 per acre. Mr. Price testified that he thought the agreement between Mr. Aslinger and the estate was "a loose gentleman's agreement," and that his statement to the real estate agent handling the transaction that he would "consider" selling the 3.31 acres to Mr. Aslinger was sufficient.

After the sale of the entire farm to Mr. Price closed pursuant to his second contract with the estate, Mr. Price met with Mr. Aslinger and they walked the property at issue. After seeing the 3.31 acres that the estate had contracted to sell Mr. Aslinger, Mr. Price refused to sell the property. Mr. Aslinger then filed this action against the Giesemann estate, the heirs individually, and Mr. Price, for specific performance. Mr. Price answered, arguing, among other things, that the contract between Mr. Aslinger and the estate was unenforceable due to insufficient description and barred by the Statute of Frauds, T.C.A. § 29-2-101(a)(4).

During the bench trial, at the close of Mr. Aslinger's proof, all Defendants moved for dismissal, and the trial court granted the motion as to all Defendants except Mr. Price. After the conclusion of the trial, the trial court entered an order finding that (1) the contract to convey the 3.31 acres of real property between Mr. Aslinger and the estate was sufficiently definite to satisfy the requirements of the Statute of Frauds; (2) Mr. Price was on inquiry notice of the existence of the Aslinger contract; (3) Mr. Price communicated to the real estate agent his unwillingness to convey the property to Mr. Aslinger, and the court denied specific performance for that reason; and (4) Mr. Price "would be unjustly enriched in the amount of \$4,700.00 should the transactions be allowed to stand." The trial court entered a \$4,700 judgment against Mr. Price in Mr. Aslinger's favor, and the court declined to grant Mr. Price's request for attorney's fees.

II. Issues Presented

Mr. Aslinger appeals, raising the following issues for review:

- (1) Whether the trial court erred in refusing to order Mr. Price to convey to Mr. Aslinger the 3.31 acres under previous contract between the estate and Mr. Aslinger; and
- (2) Whether Mr. Aslinger is entitled to recover attorney's fees from Mr. Price.

Additionally, Mr. Price raises the following issues:

- (3) Whether the trial court erred in its \$4,700 award to Mr. Aslinger pursuant to an unjust enrichment theory; and
- (4) Whether the trial court erred in declining to award Mr. Price his attorney's fees incurred to defend Mr. Aslinger's alleged cause of action under the Tennessee Consumer Protection Act, T.C.A. § 47-18-109(e)(2).

III. Standard of Review

In this non-jury case, our review is *de novo* upon the record of the proceedings below; but the record comes to us with a presumption of correctness as to the trial court's factual determinations which we must uphold unless the evidence preponderates against those findings. Tenn. R. App. P. 13(d); *Wright v. City of Knoxville*, 898 S.W.2d 177, 181 (Tenn. 1995); *Union Carbide Corp. v. Huddleston*, 854 S.W.2d 87, 91 (Tenn. 1993). The trial court's conclusions of law, however, are accorded no such presumption. *Campbell v. Florida Steel Corp.*, 919 S.W.2d 26, 35 (Tenn. 1996); *Presley v. Bennett*, 860 S.W.2d 857, 859 (Tenn. 1993).

IV. Analysis

A. Statute of Frauds: Sufficiency of Description

The bulk of Mr. Price's argument on appeal is directed to his assertion that "for the wrong reason, the trial court reached the right result," in that the trial court should have held that the contract between Mr. Aslinger and the estate was invalid and unenforceable for lack of a sufficient description of the property to be conveyed. Mr. Price is correct that should this court agree with this argument, the question of whether he is a bona fide purchaser of the property without notice of a prior equitable interest is moot; therefore, we address this argument first. We concur with the trial court's finding that the description of the property contained in the Aslinger contract was sufficient for it to be a valid and enforceable contract.

The contract between Mr. Aslinger and the Gieseemann estate consists of three pages. The first is a standard real estate sales contract form, describing the property as "3.31 ± acres from farm of James Earnest Gieseemann, 1418 Aslinger Circle, Sale Creek, TN." The second page is a more detailed description, stating in its entirety as follows:

The new property line will extend from the Southwest corner of Clifford Aslinger's land in a southerly direction along the tree line of the upper field where the property line is situated for a distance approximately even with the top corner of Clifford's land on the Bowater's line. From there the line will cross in an easterly direction towards the Bowater's line below the pond a sufficient distance to leave ample access to the pond, then turn following the small creek on the east side of the pond in a southerly direction to a point which will take in the stipulated acreage of 3.31+/- acres, and then proceed easterly again at a 90 degree angle to the Bowater's line.

Note: After the survey is completed there may be more than the 3.31 acres over the 40 acres we want to keep. In that event, we will offer any overage to Clifford for sale and that will be included in the cutout on the southeast leg of the new line.

The third page is a rough hand-drawn map of the Gieseemann and Aslinger property with a dotted line marking the approximate boundary lines of the property to be sold. The map was drawn by Geoffrey Gieseemann. Mr. Gieseemann testified that he walked off the land with Mr. Aslinger and that there was no doubt between them as to the location of the property to be sold.

The trial court found that in considering all three of the pages of the contract together, "the description is not wonderful, but it's something that you can tell where the property is located and you can tell generally what is included in the agreement to convey property." In Tennessee, "[t]he test of adequacy of description is whether a surveyor, from the description, could locate the property." *Miller v. Street*, 663 S.W.2d 797, 798 (Tenn. Ct. App. 1983); *Wallace v. McPherson*, 214

S.W.2d 50, 53 (Tenn. 1947). Parol evidence is admissible to show the location of the land that fills the description in the deed. *Id.* We hold that the evidence does not preponderate against the trial court's finding that the description in the contract was sufficient to adequately describe the subject property. In this regard, we note that two of the corners of the subject property are easily ascertainable, because they are the current corners of Mr. Aslinger's property. Mr. Aslinger had a valid and enforceable contract with the estate for sale of the roughly 3.31 acres adjacent to his home. After signing the contract, Mr. Aslinger, through his attorney, deposited \$500 in an escrow account as part of the payment for the 3.31 acres.

B. Bona Fide Purchaser: Inquiry Notice

The pivotal issue thus arises as to whether Mr. Price was a bona fide purchaser of the 43.31-acre Gieseemann farm. This court has recently defined "bona fide purchaser" as "one who buys something for value *without notice of another's claim* to the item or of any defects in the seller's title; one who has in good faith paid valuable consideration for property without notice of prior adverse claims." *Rogers v. The First Nat'l Bank*, C/A No. M2004-2414-COA-R3-CV, 2006 WL 344759 at *12 (Tenn. Ct. App. M.S., Feb. 14, 2006)(emphasis added); *accord Henderson v. Lawrence*, 369 S.W.2d 553, 556 (Tenn. 1963)(stating "A bonafide purchaser is one who buys for a valuable consideration without knowledge or notice of facts material to the title").

As already stated, the trial court found that Mr. Price "was on inquiry notice of the existence of that [Aslinger-Gieseemann] contract." There is abundant proof in the record supporting this conclusion, and the evidence does not preponderate against it. Mr. Price concedes his awareness of the existence of the agreement between Mr. Aslinger and the estate until the second contract between Mr. Price and the estate was executed, at which time Mr. Price testified that he thought the Aslinger deal had changed. Mr. Price testified that at the time of closing on the second contract, "I thought that Gieseemann and Aslinger had agreed that me considering that [selling the 3.31 acres] was good enough for Mr. Aslinger." But as the purchaser, Mr. Price was "(c)hargeable with notice, by implication, of every fact affecting the title which would be discovered by an examination...of every fact as to which the purchaser, with reasonable prudence or diligence, ought to become acquainted." *Hall v. Hall*, 604 S.W.2d 851, 853 (Tenn. 1980), quoting *Teague v. Sowder*, 114 S.W. 484, 489 (Tenn. 1908).

Moreover, this court has specifically held that "[a] contract or agreement to convey is held to be such an interest as will prevail as against a subsequent purchaser with notice." *Williams v. Title Guaranty & Trust Co.*, 212 S.W.2d 897, 901 (Tenn. Ct. App. 1948). Regarding the concept of "inquiry notice," the *Williams* court stated as follows:

'Notice of a prior interest which will be effective to charge a subsequent purchaser with knowledge of its existence may be either direct information of the prior right, or may consist of information of facts from which actual knowledge may be inferred; the notice need

not be actual, but may be constructive or implied. It need not contain complete information of every fact material for the purchaser to know. Where actual notice of an outstanding interest is duly given, the purchaser is chargeable with notice of all that an inquiry of the person giving the notice of the outstanding interest would have disclosed.'

* * *

Notice is either actual or implied. When anything appears which would put a man of ordinary prudence upon inquiry, the law presumes that such inquiry was actually made, and therefore fixes the notice upon him as to all legal consequences.

Williams, 212 S.W.2d at 901; *see also Texas Co. v. Aycock*, 227 S.W.2d 41, 46 (Tenn. 1950)(stating "whatever is sufficient to put a person upon inquiry, *is notice of all the facts to which that inquiry will lead*, when prosecuted with reasonable diligence and good faith." [emphasis in original]); *City Finance Co. v. Perry*, 257 S.W.2d 1, 2 (Tenn. 1953); *Blevins v. Johnson County*, 746 S.W.2d 678, 682-83 (Tenn. 1988).

When Mr. Price was asked whether "he knew that Mr. Aslinger and Mr. Giesemann had agreed that he [Mr. Aslinger] was going to buy three acres," he answered, "I knew that on the first contract, the 40 acres contract." Mr. Price further testified as follows:

Q: Now, you knew when you signed the first contract that you were not getting the entire farm?

A: I did.

Q: You knew that they were going to sell three acres to Mr. Aslinger?

A: Yes.

Q: And you knew where his property was?

A: I know where Mr. Aslinger lives now. Actually when I signed it I wasn't sure. I wasn't familiar with the area at all.

Q: Okay. But did they tell you that Mr. Aslinger lives next door?

A: They told me that three acres would be taken out. That's what I was told.

Mr. Giesemann testified that he believed Mr. Price had agreed to transfer the 3.31 acres to Mr. Aslinger as part of the second agreement, and that had he known that Mr. Price was not going to go through with the transaction to Mr. Aslinger, he would not have sold the property on behalf of the estate to Mr. Price. Mr. Giesemann deposed that before the signing of the second contract, Paula Palmer, the real estate agent, "reassured that everything was taken care of. That Mr. Price would be selling the property to Mr. Aslinger." Ms. Palmer denied saying that to Mr. Giesemann. Before they signed the second contract, Mr. Giesemann drafted a simple one-paragraph agreement, and gave it to Ms. Palmer to deliver to Mr. Price; it states as follows:

I, _____, agree to sell the remaining portion of the property over 40 acres from the James E. Giesemann estate to Mr. Clifford Aslinger for the amount of \$4,000 dollars per acre, with the provision that the property be deeded to his present property so as to prevent any easements or access required by way of my property. Also providing that he be able to close on said property within 60 days of the closing for the Giesemann property.

Mr. Price refused to sign this document after receiving it from Ms. Palmer. He testified as follows regarding his discussion with Ms. Palmer about the 3.31 acres and the Aslinger deal:

Q: And this document was transmitted to you by Ms. Palmer?

A: Yes, it was.

Q: And what did she have to say about this document?

A: She said that this was presented by Mr. Giesemann as a side agreement between Aslinger to convey three acres to him after the sale of the 43 acres.

Q: Did you ever signify that you were going to sign that document?

A: I told her no.

Q: All right. What did you tell Ms. Palmer you were willing to do in that circumstance?

A: I said I would consider it.

Q: All right. And what was your problem with signing this document?

A: Well, it's not specific. At that time, at that date I hadn't seen any indication of where this property was that hadn't been staked off, there was nothing cut, I had never saw [sic] a description, nothing.

Mr. Giesemann and Mr. Price had no personal contact with each other until the closing. Mr. Giesemann testified that Ms. Palmer told him that Mr. Price had signed the agreement to sell to Mr. Aslinger, stating as follows:

A: ...it was my understanding that that document had been executed. So I was selling an unencumbered piece of property to Mr. Price which he with my understanding had an agreement with Mr. Aslinger to at a later term sell him the remainder of the acres.

Q: And Mr. Price didn't give you that understanding that he had an agreement with Mr. Aslinger?

A: No, he didn't.

Q: The understanding you got relative to that came from Ms. Palmer?

A: That's correct.

* * *

A: ...I knew what my deal was with Mr. Aslinger. And our intent was to convey the same deal from Mr. Price to Mr. Aslinger that we had to Mr. Aslinger.

Q: All right.

A: And it was my understanding that he was agreeable to that.

Q: Through Ms. Palmer?

A: Through Ms. Palmer.

Ms. Palmer denied making any statement to Mr. Giesemann that would cause him to believe that Mr. Price had agreed to sell the 3.31 acres to Mr. Aslinger. Ms. Palmer also denied that she knew there was a written agreement between the Giesemann estate and Mr. Aslinger, though she testified that "it was my understanding there was three acres that had been promised to him [Mr. Aslinger] by Mr. Giesemann." There is ample evidence in the record supporting the conclusion that Ms. Palmer knew or clearly should have known of the existence of the Aslinger contract, including a fax from Mr. Giesemann to her stating on the cover page, "[d]o you need a copy of the agreement to sell to Mr. Aslinger? Can we do the closings back to back?"

The trial court, although finding that Mr. Price was on inquiry notice of the Aslinger contract, found that Mr. Price did not consent to sell the 3.31 acres to Mr. Aslinger as part of the second contract with the Giesemann estate. But as our above analysis of the law in Tennessee regarding bona fide purchaser status demonstrates, the central concept to the issue of whether Mr. Price was a bona fide purchaser, and therefore would take the property clear of Mr. Aslinger's prior equitable interest, turns not on his consent, but rather on whether he was on notice of the earlier interest. *Texas Co. v. Aycock*, 227 S.W.2d 41, 46 (Tenn. 1950); *Williams v. Title Guaranty & Trust Co.*, 212 S.W.2d 897, 901 (Tenn. Ct. App. 1948); and other cases above cited.

Mr. Price does not seriously deny knowing of the earlier Aslinger agreement, although in his testimony he was careful to label his understanding of it as "a loose gentleman's agreement" rather than a "contract." Mr. Price's argument rests on his assertion that he thought the agreement had been altered at the time the Giesemann heirs came to him with the second agreement to sell him the entire farm. Mr. Price relies upon the following statement of the law found at 66 C.J.S. *Notice*, §13:

When a person has notice of circumstances which put him upon inquiry, *and he actually makes due inquiry into the circumstances* and either fails to discover the existence of any rights in conflict with his own or becomes satisfied that the suspicions which have been awakened are unwarranted, or that a change in the circumstances has obviated the grounds of his apprehension, he is to be regarded as having acted bona fide and without notice of the fact.

(Emphasis added). While we have no quarrel with this general statement, it does not avail Mr. Price because we are of the opinion that he did not "actually make due inquiry into the circumstances." As we have stated, the evidence does not preponderate against the trial court's finding that Mr. Price was on inquiry notice of the Aslinger contract. All that would have been required on Mr. Price's part was a phone call to Mr. Giesemann, his seller, before closing, or an inquiry at the closing while they were face to face. All parties agreed that there was no mention made of the Aslinger contract at the closing. If there had been, the truth would easily have been ascertained. A buyer "may not close [his] eyes and ears and thereafter claim a lack of knowledge," relying on willful ignorance, and thereafter claim to be a bona fide purchaser. *Wells Fund I v. Shoe Show of Rocky Mount, Inc.*, 863 S.W.2d 731, 733-34 (Tenn. Ct. App. 1993).

Thus, Mr. Price was not a bona fide purchaser of the property, and he takes the land subject to Mr. Aslinger's prior equitable interest. Upon remand, the trial court is directed to enter an order mandating the sale of the 3.31 acres, more or less, as described in the Aslinger contract, from Mr. Price to Mr. Aslinger, at a purchase price of \$4,000 per acre. Mr. Aslinger shall be responsible for paying the cost to survey the approximately 3.31 acres he is purchasing, and the sale shall be closed "in a reasonable time" as agreed in the contract.

C. Unjust Enrichment

It appears that in the first Giesemann-Price contract for 40 acres, the parties agreed that the estate would pay the cost to survey the land and Mr. Price would pay the closing costs. In the second contract for the approximately 43.31 acres of the whole farm, Mr. Price suggested that he pay the survey cost and that the estate pay the closing cost up to the amount paid by Mr. Price for the survey cost. The estate and Mr. Price agreed to this arrangement in the second contract. At closing, the estate paid some \$4,700 in closing costs. Mr. Giesemann testified that he thought that Mr. Price was going to pay an equal amount in survey costs because the land still had to be surveyed in order to convey to Mr. Aslinger his 3.31 acres. Mr. Giesemann stated that he “thought there still was a survey issue otherwise I wouldn’t have paid \$4,700 of his closing costs.” After closing and Mr. Price’s refusal to sell any land to Mr. Aslinger, no survey ever took place and thus Mr. Price did not pay any survey costs.

The trial court held that “it would be inequitable to the conscience of this Court for him [Mr. Price] to retain that 47 hundred dollars that was to be expended for a surveyor that he never paid,” and ordered Mr. Price to pay Mr. Aslinger \$4,700. We find that the evidence preponderates against the trial court’s decision to award the \$4,700 to Mr. Aslinger based on a contract to which he was not a party. If any unjust enrichment took place by virtue of Mr. Price never incurring the survey costs, it was not Mr. Aslinger who was harmed, but rather the Giesemann estate. The estate, however, has not raised any issue on appeal. We reverse the judgment against Mr. Price awarding \$4,700 to Mr. Aslinger.

D. Attorney’s Fees

Both Mr. Price and Mr. Aslinger argue on appeal that the trial court should have awarded them attorney’s fees. The general rule regarding a trial court’s award of attorney’s fees is that “the allowance of attorney’s fees is largely in the discretion of the trial court, and the appellate court will not interfere except upon a clear showing of abuse of that discretion.” *Taylor v. Fezell*, 158 S.W.3d 352, 359 (Tenn. 2005); *Aaron v. Aaron*, 909 S.W.2d 408, 411 (Tenn. 1995). We hold the trial court did not err in requiring the parties to pay for their own attorney’s fees.

Mr. Price argues that he should be reimbursed for the fees he expended in defending Mr. Aslinger’s claim against him under the Tennessee Consumer Protection Act, T.C.A. § 47-18-109. The record shows that Mr. Aslinger did not pursue his TCPA claim further than the allegation in his complaint. The subsection of the TCPA under which Mr. Price claims entitlement to his fees, T.C.A. § 47-18-109(e)(2), requires a finding by the trial court that the action is “frivolous, without legal merit or brought for the purpose of harassment.” This court has recently noted that “[a]s the language of the statute makes clear, even where this prerequisite is met, whether or not to award fees is discretionary with the court.” *Glanton v. Bob Parks Realty, C/A No. M2003-01144-COA-R3-CV*, 2005 WL 1021559 at *9 (Tenn. Ct. App. M.S., Apr. 27, 2005). Based on our review of the record, we hold the trial court did not abuse its discretion in declining to award Mr. Price attorney’s fees.

We reach the same conclusion regarding Mr. Aslinger's request for attorney's fees. Mr. Aslinger's brief asserts, without further elaboration or citation to authority as regards an award of attorney's fees, that "Price is quite clearly the trustee of Aslinger, and the Court is authorized by Tennessee law to award attorney's fees to Aslinger." This sentence reflects the full extent of his argument that he should have been awarded his fees. The judgment of the trial court regarding fees is in keeping with the American Rule, well established in this state, *see State v. Brown & Williamson Tobacco Corp.*, 18 S.W.3d 186, 194 (Tenn. 2000); *John Kohl & Co. v. Dearborn & Ewing*, 977 S.W.2d 528, 534 (Tenn. 1998), that, generally speaking, a litigant is normally expected to pay his or her own attorney's fees, absent agreement or statutory provision.

V. Conclusion

For the aforementioned reasons, the judgment of the trial court against Mr. Price awarding Mr. Aslinger \$4,700 is reversed. Pursuant to our conclusion that Mr. Price is not a bona fide purchaser without notice of Mr. Aslinger's prior equitable claim under Mr. Aslinger's contract with the Giesemann estate, the trial court is directed on remand to enter an order mandating the transfer of approximately 3.31 acres in a "reasonable time" as described in the Aslinger-Giesemann contract, at a purchase price of \$4,000 per acre. Mr. Aslinger shall bear the survey costs. The trial court's judgment declining to award either party attorney's fees is affirmed. Costs on appeal are assessed equally between the Appellant, Clifford Aslinger, and the Appellee, Kenneth T. Price.

SHARON G. LEE, JUDGE